

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-19

Date issued: December 6, 1989  
Requested by: Superintendent Marge Everhart  
Golva Public School

- QUESTION PRESENTED -

Whether, in the absence of a statutory guideline, a school board may exercise its discretion to establish a means of determining what constitutes a "majority of qualified electors" pursuant to N. D. C. C. ' 15-40.2-01.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that by necessary implication a school board may exercise its discretion in determining what constitutes a "majority of qualified electors" pursuant to N. D. C. C. ' 15-40.2-01.

- ANALYSIS -

N. D. C. C. ' 15-40.2-01 provides in pertinent part, as follows:

The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.

(Emphasis supplied.)

It is unclear from reading the statute what method or source of information a school board is to use in determining the total number of "qualified electors." As a result, it is difficult for a school board to determine the number of signatures necessary to satisfy the majority requirement.

Although N. D. C. C. ' 1-01-51 defines "qualified elector" as "a citizen of the United States who is eighteen years of age or older; and is a resident of this state and of the area affected by the petition," it, too, fails to establish guidelines to assist a school board in ascertaining the total number of qualified electors in the district.

The North Dakota Century Code contains a number of sections, six of them in

N. D. C. C. tit. 15 alone, that provide various methods for the state and political subdivisions to determine the total number of qualified electors in a given area. The six sections in N. D. C. C. tit. 15 provide:

1. "Upon petition of five percent of the qualified electors voting in the last preceding countywide election . . . ." N. D. C. C. ' 15-18-05 (emphasis supplied).
2. "[S]igned by twenty percent of the qualified electors of said school district voting at the last annual school election . . . ." N. D. C. C. ' 15-20.2-13 (emphasis supplied).
3. "[F]ive percent of the qualified electors of a county or parts thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon . . . ." N. D. C. C. ' 15-22-25 (emphasis supplied).
4. "[U]pon written petition signed by two-thirds of the qualified electors in the contiguous territory. The county committee shall determine the sufficiency of the petition and the required number of electors necessary to constitute a two-thirds majority." N. D. C. C. ' 15-27.2-01 (emphasis supplied).
5. "Upon the filing with it of a petition signed by a number of qualified electors equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year the census was taken, unless the census is greater than four thousand, in which case only fifteen percent of the number of persons enumerated in the school census is required . . . . However, not fewer than twenty-five signatures of qualified electors is required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the county superintendent for the county in which the school is located shall determine the number of qualified electors in the qualified district. N. D. C. C. ' 15-27.3-19 (emphasis supplied).
6. [A] petition signed by at least one-third of the qualified electors of the school district as determined by the number of persons voting at the most recent annual school district election. N. D. C. C. ' 15-28-01(2) (emphasis supplied).

These six provisions contain five different methods for determining the number of qualified electors in a given area. These sections also represent only some of the different procedures for determining the total number of qualified electors. Consequently, it cannot be clearly deduced that the Legislature's failure to make an express provision for the manner in which a school board was to perform its duty pursuant to N. D. C. C. ' 15-40.2-01, evidences an intent

that a school board employ a particular method of calculating the total number of qualified electors.

The Legislature's failure to expressly provide a method for determining the number of qualified electors does not preclude a school board from discharging its duty pursuant to N. D. C. C. ' 15-40.2-01.

An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty.

State ex rel. Bauer v. Nestos, 187 N.W. 233, 235 (N.D. 1922). Thus, as a public body, a school board has, in addition to the authority the Legislative Assembly expressly gives it by statute, those powers and duties that are necessarily implied from the express grant of authority. See American Fed'n of State, County & Mun. Employees v. Olson, 338 N.W.2d 97, 100 (N.D. 1983).

While N. D. C. C. ' 15-40.2-01 expressly authorizes a school board to send pupils to other districts or institutions "when petitioned to do so by a majority of qualified electors of the district," it does not establish the means by which a school board is to calculate the total number of qualified electors in the district. This express statutory authority carries with it by implication the authority to employ the means necessary to perform the duty imposed. Accordingly, it is my opinion that a school board must exercise its discretion to determine the method to be used in determining the number of qualified electors in the school district. It would not be inappropriate if the method chosen was one which is already provided for by statute.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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ATTORNEY GENERAL' S OPINION 89- 19  
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Page 4

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